K

19 49.

File No. Govt. of India Act II/49 (N) Pt

Legal Deptt.

B **BRANCH**

Subject:— Notifications under the Government of India Act 1935

(For subsequent pps. pl. see pt. II)

E 29
P — 1949

File No. Govt. of India II/49 (N) Pt. I

Gen. 194 e.

144-L

Office of the Raja.

In view of the decision of the High Court in the case of the Commissioner of Income-tax, Bombay V. A.H.Wadia, 1947 B.L.R. 633 and the decision of the House of Lords in Canadian Eagle Oil Co. v. Rex. 1946 A.C.119, the view taken by the Government of India in their letter dated 10th July 1943 seems to be correct. It is true that under section 155 of the Government of India Act, the Government of a Province is not liable to federal taxation in respect of income accruing, arising or received in India. But when a Company is assessed to income-tax, it does not according to the decision of the House of Lords in the case referred to above pay tax on behalf of the shareholders. Although, therefore, the Provincial Government may hold shares in a company, in law it is the company that is taxed and not the Government. It will, therefore, be not possible for the Provincial Government to claim any refund of tax paid on dividends on shares held by them in companies.

G.G. Sd/-P.S.Lad
29-1

Remembrancer of Legal Affairs.

U.O. to P.D.No. 757. dated the 21st January 1949.

S.A.R.
9-6
4 copies

R.I.No. 4-Confl. dated 4-1-1940

Submitted.

The questions for consideration are whether the incorporation of the taxation measures such as the electricity duty, urban immoveable property tax etc. in the Bombay Finance Act, 1932, was legally correct and whether there is any legal objection to incorporating new taxation measures such as the proposed tax on news papers advertisements in the Finance Act.

S.A.K. I agree.

There is no provision in section 82 of the G.... of India Act, 1935 (which relates to the financial bills) or in any other section of the Act, requiring that financial measures of the kind referred to in section 82 should be incorporated in one single Act and that such Act or amendments there-to only should be introduced or moved in the Legislative Assembly. There can be one Finance Act in which may be included all financial measures as may be considered necessary every year or there may be separate Acts for such purpose. As stated by the special Officer, Mr. Nadkarni, in his note at pp. 1-3 ante, there are no hard and fast rules in this matter but as it is suggested by him complicated measures of taxation which require elaborate provisions should be incorporated in-to separate Acts while simple measures of taxation may be included in the Finance Act.

Sd/-
3-2

Addl Secy. The view taken by the special office (Mr. Nadkarni) is correct.

U.M. to F.D.No. 77-Confl dated 3-2-40 Sd/-J.B.Dhurandhar S.A.K./ 9-6/

Legal Department.

A revised draft notification is sent herewith.

It has been repeatedly held by the H.L.A. that a notification under section 92(1) of the Government of India Act, 1935, cannot be issued with retrospective effect. In this case, the Government of India by its notification in the Ministry of Labour No. S^{o} 2102)(1), dated the 31st August 1946, have brought into force Chapters I, II, III, and VIII of the Act on the 1st September 1946. In order to enable the bringing of the Act into force in the partially excluded areas of the Bombay Province from a date o to be specified in the notification, sub-section (3) of section 1 of the Act has been suitably amended. The Labour Department should specify in the notification the date on which the Act is intended to be brought into force in the partially excluded areas.

C.C. Sd/-J.R.Thudhar
2-2

Additional Secretary to [illegible]

U.R. to Labour Department, No. 1262, dated the 2nd February 1949

S.A.R
9-6
4 copies

NOTIFICATION.

Labour Department.

Bombay Castle. January 1949.

No. :- In exercise of the powers conferred by sub-section (1) of section 92 of the Government of India Act, 1935, the Governor of Bombay is pleased to direct that the Employees' State Insurance Act, 1948 (XXXIV of 1948), shall apply to the partially excluded areas in the Province of Bombay subject to the following modification namely:-

Government of India Act, 1935.

In sub-section (3) of section 1 of the said Act, for the words "It shall" the words and figures "Chapters I, II, III, and VIII of this Act shall come into force on the ----------*------ day of ----------of 1949, and the remaining provisions" shall be substituted.

*Here insert the date and month of the publication of the notification.

By order of the Governor of Bombay.

Secretary to Government.

S.A.E.
9-6
4 copies

Legal Department.

Two revised draft notifications are sent herewith.

2. The draft notification at page 17 ante is not in order in so far as it relates to the National Service (Temporary and Released Persons) Ordinance, 1948. That Ordinance has come into force on the 11th September 1948, by virtue of the provision of sub-section (3) of section 1 thereof. A notification under section 92 of the Government of India Act, 1935, cannot be issued so as to give retrospective operation to the Ordinance. It is therefore necessary to modify sub-section (3) of section 1 of the Ordinance in its application to the partially excluded areas so as to enable Government to bring it into force on the date on which the notification under section 92 of the Government of India Act will be issued. The second revised draft notification provides accordingly.

Sd/-J.K.Dharandhar.
8.2

Additional Secretary to Government.

U.O. to H.D. (Spl.) No. 1442, dated the 8th Feb. 1949.

S.A.K.
9-6-
4 copies

NOTIFICATION.

Revenue Department,
Bombay Castle. 1949.

Government of India Act. 1935.

---. In exercise of th powers conferred by sub-section (1) of section 92 of the Government of India Act. 19 the Governor of Bombay is pleased to amend Government Notificatio Revenue Department No. 1166/45, dated 27th May 1947 as follows namely:-

To the said notification the following proviso and Schedule shall be added, namely:-

"Provided that the said Bombay Agricultural Debtors Relief Act. 1947, shall, in its application to the partially excluded areas in the West Khandesh District specified in the Schedule hereto appended, have effect subject to the following modification, namely:-

For clause (3) of section 2 of the said Act, the following shall be substituted, namely:-

"(3) 'Court' means the court of the Civil Judge (Junior Division), Nandurbar, sitting at Shahada; "

The Schedule.

I

The following villages comprising the Akrani Mahal:-

(To be filled in).

The following villages comprising the Mah-vasai areas:

(To be filled in)."

BY order of the Governor of Bomb

Secretary to Government.

S.A.K.
9-6
4 copies

Legal Department.

The draft notification at page 93 ante is not in order. Under Government Notification. Revenue Department No. S . 127/53399, dated the 1st February 1947, issued under section 4 of the Bombay Agricultural Debtors Relief Act, 1939, the Civil Judge (Junior Division), Shirpur, was not exercising his authority as a court, but as a Board consititated for the purposes of the Act and the question of withdrawing from his jurisdiction the areas consisting of Akrani Mahal and Mewas areas under the Bombay Civil Courts Act, 1869, does not arise. Moreover all Boards established under section 4 of the Act of 1939 have been dissolved by section 56 of the a Act of 1947. The Court as defined in the Bombay Agricultural Debtors Relief Act, 1947, instead of the Board, now has jurisdiction under the Act. But as there are no Civil Judge's Courts in the areas of Akrani Mahal and Mewas Area as pointed out by the High Court, the only necessary thing to do is to modify the definition of the word "Court" in the relation to the said two areas. A requisite draft is sent herewith. The orders of Government should be obtained before it is issued .

The Revenue Department should examine whether the Act in its working in the said areas requires to be modified further.

Sd/-J.R.Dhurandhar,
14-3

Additional Secretary to Government.

U.R. to R.D.No. 2940, dated the 14th March 1949.

S.A.K.
11-6
4 copies

NOTIFICATION

Finance Department.

Bombay Castle, July 1949.

Government of India Act, 1935.

No. . In exercise of the powers conferred by sub-section (1) of section 92 of the Government of India Act, 1935, the Governor of Bombay is pleased to direct that the Public Companies (Limitation of Dividends) Act, 1949 (XXX of 1949), shall apply to the partially excluded areas in the Province of Bombay, subject to the modification that in section 3 of the said Act, for the words "after the commencement of this Act" the words "after the day of July 1949" shall be substituted.

* Date should be filled in by F.D.

By order of the Governor of Bombay

Secretary Government.

S.A.K.
11-6
4 copies

Legal Department.

- A revised draft notification is sent herewith.

2. The proposal is to apply the Public Companies (Limitation of Dividends) Act, 1949, to the partially excluded areas in the Province of Bombay. Section 13 of this Act repeals the Ordinance of the same name. But that Ordinance had not been applied to the partially excluded areas. Section 3 of the Act imposes an obligation upon a company as regards the payment of dividends after the date of the commencement of the Act that is after 27the April 1949. But as the said Act is being applied just now, the said date will have to correspond to the date on which the notification will be issued.

Sd/- J.R.Khusandhar,
9-7

Additional Secretary to Government.

U.R. to F.D. . No. 7709, dated the 11th July 1949.

S.A.K.
11-6
4 copies

Legal Department.

No question of law is involved. Whether the Bombay Nursing Homes Registration Act, 1949 should be applied to the "Partially Excluded areas" is a question of an administrative nature. However, as section 1 of the Act applies to the whole of the Province there is no objection to apply the Act to the Partially Excluded areas bringing section 1 only into operation at present. The remaining previsions of the Act can be brought into operation in these areas afterwards when these areas have municipalities, as the administration of the Act is left to these bodies.

A draft notification is appended hereto.

C.C Sd/-J.R.Dhurandhar.
2-8

Additional Secretary to Governm....

U.R. to H.& L.U.D.No. 8711, dated the 3rd August 1949.

S.A.K.
11-8
4 copies

Legal Department.

From paragraph 2 of the Government of India's letter No. 5548/4 /Estates, dated the 7th January 1949, at page 11 of N.D. file 498, it appears that the Government of India held that sectio 114 of the Indian Army Act, 1911 is in force in the partially excluded Area. Section 114 of the Act cannot by itself come into force in the partially excluded Area unless it is held that the whole Act is in force in that area. It is therefore necessary to apply the India Army (Amendment) Act, 1948, (XLIII of 1948), to the partially excluded area as desired by the Government of India.

The Naval Discipline Act as set forth in the First Schedule to the Indian Navy Discipline Act, 1934 contains provisions for punishing person subject to that Act for offences specified therein committed in any canteen or sailors' home or any place of recreation placed at the disposal of or used by officers or men of His Majesty Navy which may be prescribed by the Central Government whether in or out of British India. The Act as such can be said to be in operation in the partially excluded area. The Indian Navy (Discipline) Amendment Act, 1948, may therefore be applied to the said area under section 92 of the Government of India Act.

O.C. J.K.Bhartadhar.
12-3

Additional Secretary to Government

U.O. to N.D. , No. 2913, dated the 14th March 1949.

S.A.K.
9-6

4 copies

NOTIFICATION.

Health & Local Government Department.

Bombay Castle. 1949.

Government of India Act, 1935.

No. :- In exercise of the powers conferred by sub-section (1) of section 92 of the Government of India Act, 1935, the Governor of Bombay is pleased to direct that the Bombay Nursing Homes Registration Act, 1949 (Bom. XV of 1949), shall apply to the partially excluded areas in the Province of Bombay.

By order of the Governor of Bombay,

Secretary to Government.

S.A.K.
11-6
4 copies

Legal Department.

In place of the draft notification at page 215 ante, a revised draft notification is sent herewith.

2 By Government Notification in the Health and Local Government Department, No. 6065/33, dated the 2nd July 1949, the Bombay Medical Practitioners (Amendment) Act, 1949, has been brought into force from the 2nd July 1949.

The Act will have therefore to be applied to the partially excluded areas with the modification in sub-section (2) of section 1 that it shall come into force from the date of the publication of the proposed notificatio

O.O. J.R.Dhurandhar.
16-8

Additional Secretary to Government.

U.R. to H.& L.G.D.No. 9266, dated the 18th August 1949.

S.A.K.
11-8
4 copies

N O T I F I C A T I O N.

HEALTH AND LOCAL GOVERNMENT DEPARTMENT.

BOMBAY CASTLE, AUGUST 1949.

No. 3334/33:- In exercise of the powers conferred by sub-section (1) of section 92 of the Government of India Act, 1935, the Governor of Bombay is pleased to direct that the Bombay Medical Practitioners' (Amendment) Act, 1949 (Bom. XXXIII of 1949), shall apply to the partially excluded areas in the Province of Bombay, subject to the modification that for sub-section (2) of section 1 of the last mentioned Act, the following shall be substituted, namely:-

Government of India Act, 1935.

"(2) It shall come into force on day of August 1949".

* Here insert the date of the notification.

By order of the Governor of Bombay.

Deputy Secretary to Government.

S.A.K.
11-6
4 copie

STATEMENT OF THE CASE.

Immediate

Section 247 of the Government of India Act, 1935, before its adaptation by the India (Provisional Constitution) Order, 1947, provided that the conditions of service of all persons appointed to a Civil service or a civil post by the Secretary of State shall as respects pay, leave and pension be such as may be prescribed by rules to be made by the Secretary of State. Sub-section (4) of that section expressly provided that the salary and allowances of any such person shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation, and if he is serving with the connection of the affairs of a Province be charged on the revenues of the Province. Sub-section (5) of that section also provided that pensions payable to or in respect of any such person and Government contributions in respect of any such person to any pension-fund or provident fund shall be charged on the revenues of the Federation. Expenditure on account of the salaries, allowances and pensions and Government contributions to pension funds and provident fund being declared by the Government of India Act to be charged on the revenues of the Province, fell within clause (g) of sub-section (3) of section 78 of the Act with the result that the estimates of expenditure relating to expenditure charged upon the revenues of the Province could not be submitted in view of section 79 of the Act to the vote of the Legislative Assembly. Since under the Government of India Act the expenditure on account of salaries and allowances of persons appointed by the Secretary of State and the pensions payable to or in respect of such persons was not required to be submitted to the vote of the legislative Assembly there was no risk of the Assembly refusing to assent to any demand for a grant on account of the above-said expenditure or reducing the amount on account of such expenditure. Section 247 of the Government of India Act has now been adapted by the India (Provisional Constitution) Order, 1947. The section as adapted does not contain any provision charging the salaries and allowances of the persons appointed by the Secretary of

State or their pensions an the revenues of the Province or the Federation. In view of this emission, the salries and allowances of such persons and their pensions will have to be submitted in view of the provisions of sub-section (2 of section 79 of the Act to the vote of the Ligislative Assembly. The question is whether such a position is contemplated by the India Independence Act, 1947, under which the India (Provisional Constitution) Order 1947 has been made. Section 9 of the Indian Indspendence Act authorits the Governor General to make by an order such provision as appears to him to be necessary or expendient for bringing the provisions of the Act into effective operation. It also empowers the Governor General to make an order for making emissions from, additions to , and adaptations and modifications of the Government of India Act, 1935. It may be said at once here that the Indian Independence Act, 1947, will have primacy over the orders of the Governor General under section 9, and it would seem that in case of any inconsistency between the provisions of the Indian Independence Act which-shall- and any order made thereunder, it is the Indian Independence Act which shall prevail. Section 10 of that Act specifically provides for the Secretary of State's services . Sub-section (2) of that section provides:-

"Every person who----

(a) having been appointed by the Secretary of State, or secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed dday to serve under the Government of either of the new Dominions or of any Province or part thereofl or

(b) having been appointed by His Majesty before the appointed day to be a Judge of the Federal Court or of any Court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge o in either of the new Dominions,

Shall be entitled to receive from the Governments of the Dominions and Province or parts which he is from time to time serving or, as the case may be, which are served by sam the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respect disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day."

It will be seen from the above provision that the persons

appointed by the Secretary of State or the Secretary of State in Council along with the Judges of the Federal Court or the High Court are entitled to the same conditions of service as respects remuneration, leave and pension as they were entitled to immediately before 15th August 1947. The Indian Independence Act, 1947, has thus guaranteed to the officers appointed by the Secretary of State and to the Judges of the Federal Court and of the High Court the same conditions of service as respects remuneration, leave and pension to which they were entitled before 15th August 1947. Rule 2 read with Schedule 1 to the Superior Civil Services Rules secures to the members of the services specified in the said Schedule the scales of pay mentioned in that Schedule. If that is so, no deduction in their pay, allowances and pension can be made by the Legislature. In effect the Indian Independence Act provides that the expenditure on account of the salaries, allowances and pensions of the officers of the Secretary of State and of the Judges of the Federal Court and the High Court shall not be submitted to the vote of the Legislature. Section 247, of the Government of India Act, as adapted, however, removes from the statute book the old provisions requiring the expenditure on account of salaries and allowances of the persons appointed by the Secretary of State and their pensions to be charged on the revenues of the Province with the result that such expenditure will have now to be submitted to the vote of the Legislative Assembly. Similar charging provisions contained in clause (a) of section 33(3) in respect of Judges of the Federal Court and the High Court has not however been deleted. But there seems to be no valid ground for making this distinction. If the charging provision in respect of the

judges of the Federal Court and the High Court could be delated as being inconsistent with the provisions of section 10 of the Indian Independence Act, 1947, similar provision in section 247 could not also be deleted. The adaptation of section 247 would therefore be ultra vires the provisions of the Indian Independence Act, and for that reason ineffective. As the point is important, the Advocate General is requested to favour Government with his opinion in the matter.

Sd/.

Remembrancer of Legal Affairs.

U.B. to the Advocate General Bombay, No. 2245 , dated the 5th March 1948.

S.A.K.
11-6
4 copies

No. 22 of 1949.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,

Bombay , 9th September 1949.

O P I N I O N.

Section 247 of the Government of India Act, 1935, as adapted by the India (Provincial Constitution) order, 1947- creates a position inconsistent with the provisions of Section 10 of the Indian Independence Act, 1947.

Under Section 247 of the Government of India Act, 1935 as adapted it is open to the ~~ex~~ members of the Legislature to claim a right to discuss these items and to claim to vote the same.

It is, therefore, advisable to make provision to meet such a situation by appropriate legislation as contemplated under Section 6 of the Indian Independence Act, 1947, so as to avoid inconsistency.

Sd/-

Advocate General.

S.A.K.
11-6
4 copies

Office of the R.L.A.

A copy of the Advocate General's opinion together with a copy of the Statement of the Case is sent herewith.

C.C . Sd/-P.M.Lad

2-10

Remembrancer of Legal Affairs.

U.O. to F .D.No. 11105, dated the 5th October 1949.

S.A.R.
11-6
4 copies

Legal Department.

In place of the draft notification at page 55 ante, a revised draft notification is sent herewith. The amendment made by section 2 in the Letters Patent is not restricted to the use of the seal by the High Court only in the exercise of its original civil jurisdiction as stated by H.D. at page 53 ante. It would also apply to the use of the seal by the High Court in the exercise of its appellate and other jurisdictions (cf. the preamble of the Amending Letters Patent of the High Court). It is, therefore, necessary to apply section 2 also to the partially excluded areas in question. The revised draft notification provides accordingly.

Sd/-J.R.Dharandhar.
3-8

Additional Secretary to Government.

U.R. to H.D. No. 6757, dated the 3rd August 1949.

S.A.K.
11-6
4 copies

Government
of India Act, 1935.

Notification.
Home Department.
Bombay Castle. 1949.

No. 7254/5 In exercise of the powers conferred by sub-section (1) of section 92 of the Government of India Act, 1935, the Governor of Bombay is pleased to direct that the Bombay Seals Act, 1949, (Bom. XXII of 1949) shall apply to the partially excluded areas in the Province of Bombay, except the villages belonging to the following Mehwassi Chiefs, namely:-

(1) the Parvi of Kathi,
(2) the Parvi of Mal,
(3) the Parvi of Singpur,
(4) the Walvi of Gaghali,
(5) the Vasnawa of Chikhli, and
(6) the Parvi of Mavalapar.

By order of the Governor of
Bombay.

Secretary to Government.

S.A.K.
11-6
4 copies

Local Department.

From the specimen form of sanad at page 39 ante it appears that the sanad was issued in the name of the Governor in Council even though the Collector of Surat and Commissioner N.D. appears to have signed them.

The notice should therefore be issued by the Governor of Bombay as the appointing authority has the right to terminate the service. In the case of persons who are holding the post of patel as a descendant from the original grantee the form of notice will be different from that in the case of original grantee .

Two revised forms of notice are sent herewith.

Sd/- J.H.Dharandhar.
2226

Additional Secretary to Govern

U.H. to H.D.No. 539-Genfl dated the 24th August 1949.

S.A.K.
11-6
4 copies

FORM OF NOTICE.

* Here insert name of the original grantee.

To

Mr. * , Patel of-Taluka , District Surat.

Whereas in the year a sanad has been granted to you conferring on you a hereditary right of services as Patel in the village of in taluka of the Surat District;

And whereas Government has dicided to terminate the said right;

Notice is Hereby given that the right conferred on you by the said sanad will stand terminated with effect on and from 1949.

By order of the Governor of Bombay.

Secretary to Government.

S.A.K.
11-6
4 copies

FORM OF NOTICE

*Here insert the name of the person on whom the notice is to be served.

*Here insert name of the original grantee.

To

Mr. ,Patel of

taluka , district Surat.

Whereas in the year , a sanad has been granted to * , conferring on him a hereditary right of service as Patel in the village of in taluka of the Surat district;

As whereas you the descendant of..... have been enjoying the said right in the said village;

And whereas Government has decided to terminate the said right;

Notice is hereby given that the right conferred by the said sanad will stand terminated with effect on th and from 1949.

By order of the Governor of Bombay,

Secretary to Government.

S.K.
11-6
4 copies

Office of the R.L.A.

Section 1 of the Act of the Legislature of Louisiana which has been declared invalid by the Supreme Court of America provides as follows:-

> "That every person, firm, association or corporation, domestic or foreign, engaged in the business of selling, or making any charge for, advertising or for advertisements, whether print or published, or to be printed or published, in any newspaper, magazine, periodical or publicati whatever having a circulation of more than 20,00 copies per week, or displayed and exhi-bited, or be displayed and exhibited p by means of moving pictures, in the State of Louisiana, shall, in addition to all other taxes and license levied a assessed in this State, pay a license tax for the privilege of engaging in such business in this State of two per cent (2 per cent) of the gross receipts of such business."

The advertisement tax levied on newspapers under the above provisions was declared invalid by the Supreme Court in view of the First Amendment and the Fourteenth Amendment to the Federal Constitution. The First Amendment to the Federal Constitution provides "Congress shall make one law . . . abridging the freedom of the speechor of the press." The Fourteenth Amendment provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law." The Supreme Court held that by the First Amendment it was meant to preclude the National Government, and by the Fourteenth Amendment to preclude the States, from adopting any form of previous restraint upon printed publications, or their circulation, including that which had been effected by the two well-known and odious methods, namely, the levy of stamp tax on all newspapers and magazines and advertisement tax.

2. Under the Government of India, Act, 1935, which is the Constitution which governs India today, there are no provisions like the First Amendment and the Fourteenth Amendment of the American Constitution. Under that Act, [illegible] power has been given to levy tax on [illegible] advertisements. See entry 48 in Lis

Seventh Schedule to the Government of India Act, 1935. The decision of the Supreme Court of America will not, therefore, come in the way of the levy of an advertisement tax in India.

3. As regards the position under the draft Constitution, Article 13 which appears in Part III relating to fundamental rights, guarantees to every citizen the right to freedom of speech and expression. There is no express mention of the right of the Press to freedom of expression but while speaking on the Article the Honourable Dr. Ambedkar stated that "the editor of a press or the manager & are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression and therefore no special mention is necessary of th freedom of the press at all." Construed thus Article 13 gives to the press the right to would-have-been-- freedom of expression and if that Article had stood al alone it would have been possble to interpret if in the light of the njudgment of the Supreme Court of America as excluding the power of any ligislature in India to enact a law for levying advertisment tax but in view of the entry "tax on advertisements" in List II-State List, the position becomes doubtful. In virtue of the previsions of Article 217 the Legislature of any State for the time being specified in Part I or part III of the First Schedulr has the exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II and consequently the levy of an advertisement tax under a State Enactment would appear to be competent. From the Press Reports it appears that the entry "tax on advertisements" might be ultimately included in the Union List. Whether the entry appears in the State List or the Union List power to pass an enactment for the levy of an advertisement tax will vest in the appropriate Legislature under Article 217 and it would be possible to hold that the fundamental right of freedom of

expression given by Article 15 to the Press is overridden by the express power given latter on in the Constitution by Article 217 in so far as the levy of an advertisement tax is concerned.

Sd/-

Remembrancer of Legal Affairs.

S.A.K.
11-6
4 copies

H.M (Kaul)

x186
5/9/49

Legal Department.

The area known as Dangs was included for the first time in the territories of the Dominion of Indian under the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1947, issued on the 19th January 1948. Under article 3 of the said Order the area known as Dangs formed part of the Province of Bombay and the boundaries of this Province have been so altered as to comprise within them the said area. Section 91 of the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947, provides that the expression "partially excluded area" means such area as was partially excluded are immediately before the establishment of the Dominion. As the area known as Dangs was included in the territories of the Dominion of India only on the 19th January 1948, it is obvious that i is not a partially excluded area under the Governmen of India Act, 1935.

As regards the proposal to grant the concession referred to in the R.D.Notification No. 1559/45, dated the 15th June 1949, to backward tribes in the Dangs District it may be observed that as the Dangs District was been included in the Province of Bombay with effect from the 19th January 1948, the concession referred to in sub-clause (a) of clause (ii) of the R.D.Notification No. 1559/45 , dated the 15th June 1949 would automatically apply to the backward tribes living in the Dangs District provided such tribes are those as have been specified under Pt. II of the Thirteenth Schedule annexed to the Government of India (Provincial Legislative Assemblies)

S.A.K.
11-6

Order , 1936. The Order contained in the other parts of the Notification would not apply to backward tribes or backward classes or to other persons living in the Dangs District unless they have been so specifically extended.

Sd/-J.R.Dhurandhar,

13-10

Additional Secretary to Government.

U.R. to R.D., No. 1146E, dated 14th October 1949.

S.A.K.
11-6
4 copies

Office of the A.L.A.

The legal position in this matter has been exhaustively discussed in A.L.A.'s opinion No. 4784 dated 2nd May 1949, wherein it was pointed out at the conclusion that even for achieving the limited objective of entrusting the preliminaries of any decision to a Committee or Board and for the whole Commission to take the final decision in any particular matter, the safest course would be to amend the Act so as to make it possible for the Governor to make regulations for all these purposes and not to leave it to non-statutory rules. It is now proposed to achieve the same result by a mere office order for fear that if the Rules are amended, the amendments would have to be published whereupon the whole question might be raised in a Court of law, and the action of a Committee of the Commission or the action taken by Government on the advice of such Committee may itself be called in question.

2. It is highly inexpedient that for fear of a possible challenge we should seek to achieve by a mere office order something which we are satisfied cannotbe legally done even under non-statutory rules. Moreover, the draft office order empowers the Chairman to appoint the Board or the Committee. Attention is invited in this connection to rule 10 of the Rules of Procedure for the Bombay Public Service Commission which provides that the Commission may refer any matter to an individual member or to a committee consisting of members and such other persons, if any, as the Chairman may appoint for consideration and report to the Commission. That rule does did contemplate some sort of delegation in particular matters; but the delegation is to be made by the commission and not by the Chairman.

S.A.K.
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and the report is again to be submitted to the Commission. It would not be legally feasible to empower the Chairman by himself to appoint Committees to which the work of the Commission is to be delegated. The delegation to a Committee or Board is an important matter before the Commission, and under rule 2 of the Rules of Procedure, every question at a meeting of the Commission shall be determined by a majority of the votes of the members present and voting, which means that decision to appoint a Committee or to delegate any matter to it must also be taken by the Commission.

3. It would not be legally feasible to delegate even to such a Committee all the principal functions which make up the process of appointment. It is not quite clear what distinction is intended by requiring the approval of the Chairman as centre-distinguished from the concurrence of the Commissioners. However, that may be, the work of eliminating candidates before interview, of interviewing them and of settling their order of preference practically embraces all the work connected with an appointment; and as the law stands, it would not seem feasible that that work should be delegated to a sub-committee of two members. The concurrence by the other members would not have much significance; for, the other members who had not seen the candidate would be not be in a position to have mean any independent judgment about him, and concurrence would in such circumstances merely means ratification.

4. For all these reasons, it would not be expedient to issue the office order in question in order to amend the rules as suggested by r. & S.P. The proper course would be, as said in P.L.A.'s opinion No. 4754, dated 2nd May 1949, to get the Act amended for giving power to the Governor to make rules for this specific purpose. In the meantime, for convenient despatch of business, recourse may be had as much as

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possible to the facility provided by rule 10.

Sd/-P.V.Lal
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Department of Legal Affairs.

U.O. to ...a S.D.O. 1163, dated the 15th October 1949.

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